

37 Am. Jur. 2d Fraud and Deceit § 65

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

IV. False Representations

B. Necessity that Representation Be of Fact; Opinions

1. In General

§ 65. Exception as to expression of opinion; what constitutes opinion, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Fraud  11

A.L.R. Library

Misrepresentations as to financial condition or credit of third person as actionable by one extending credit in reliance thereon, 32 A.L.R.2d 184

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 219](#) (Instruction—Expression of opinion not a representation)

The principle is fundamental that fraud cannot be predicated upon the mere expression of an opinion,¹ which is understood by the representee to be only that² or which cannot reasonably be understood to be anything else.³ This rule applies to representations in regard to matters of judgment,⁴ estimate,⁵ guess,⁶ and probability,⁷ as well as to projections and expectations.⁸ Mere exaggeration is not actionable as fraud.⁹ The person to whom such statements are made has no right to rely upon them and he or she does so at his or her peril,¹⁰ and it cannot be supposed that they influenced his or her judgment.¹¹ Additionally, expressions of opinion are insufficient to authorize a recovery for fraudulent misrepresentation because such expressions are deemed not to be material to a transaction.¹²

There are qualifications and exceptions to these general rules,¹³ each one growing out of the need of preventing the successful

perpetration of fraud.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Under New York law, for a credit rating to be actionable as a misrepresentation, a plaintiff must allege that the holder of the opinion reflected in the rating did not believe the opinion at the time that it was made. *Tolin v. Standard & Poor's Financial Services, LLC*, 950 F. Supp. 2d 714 (S.D. N.Y. 2013).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ *Mutual Life Ins. Co. of New York v. Phinney*, 178 U.S. 327, 20 S. Ct. 906, 44 L. Ed. 1088 (1900); *Catskill Development, L.L.C. v. Park Place Entertainment Corp.*, 547 F.3d 115 (2d Cir. 2008) (applying New York law); *Ussery v. Children's Healthcare of Atlanta, Inc.*, 289 Ga. App. 255, 656 S.E.2d 882 (2008); *American United Life Ins. Co. v. Douglas*, 808 N.E.2d 690 (Ind. Ct. App. 2004); *Gore v. Scotland Golf, Inc.*, 136 S.W.3d 26 (Tex. App. San Antonio 2003).

² *Mutual Life Ins. Co. of New York v. Phinney*, 178 U.S. 327, 20 S. Ct. 906, 44 L. Ed. 1088 (1900).

³ *Finch v. McKee*, 18 Cal. App. 2d 90, 62 P.2d 1380 (3d Dist. 1936); *Nye Odorless Incinerator Corp. v. Felton*, 35 Del. 236, 162 A. 504 (Super. Ct. 1931); *Kennedy v. Flo-Tronics, Inc.*, 274 Minn. 327, 143 N.W.2d 827 (1966); *Wilson v. Jones*, 45 S.W.2d 572 (Tex. Comm'n App. 1932).

⁴ *Rodowicz v. Massachusetts Mut. Life Ins. Co.*, 192 F.3d 162 (1st Cir. 1999), as amended, (Nov. 3, 1999) (applying Massachusetts law); *Grove v. Principal Mut. Life Ins. Co.*, 14 F. Supp. 2d 1101 (S.D. Iowa 1998) (applying Iowa law); *Peterson v. Daka Intern., Inc.*, 61 F. Supp. 2d 634 (E.D. Mich. 1999) (applying Texas law).

⁵ *Rodowicz v. Massachusetts Mut. Life Ins. Co.*, 192 F.3d 162 (1st Cir. 1999), as amended, (Nov. 3, 1999) (applying Massachusetts law); *Finch v. McKee*, 18 Cal. App. 2d 90, 62 P.2d 1380 (3d Dist. 1936); *Wilson v. Jones*, 45 S.W.2d 572 (Tex. Comm'n App. 1932).

⁶ *Han v. Horwitz*, 2 Ariz. App. 245, 407 P.2d 786 (1965) (statement by a land salesman that holes in the ground were caused by rock collectors).

Negligent misrepresentation does not occur, under Texas law, when a defendant simply makes a guess as to a future unknown event. *In re Absolute Resource Corp.*, 76 F. Supp. 2d 723 (N.D. Tex. 1999).

⁷ *Razdan v. General Motors Corp.*, 979 F. Supp. 755 (N.D. Ill. 1997), judgment aff'd, 234 F.3d 1273 (7th Cir. 2000) (applying Illinois law); *Peterson v. Daka Intern., Inc.*, 61 F. Supp. 2d 634 (E.D. Mich. 1999) (applying Texas law).

⁸ §§ 84, 85.

⁹ *Little Caesar Enterprises, Inc. v. OPPCO, LLC*, 219 F.3d 547, 2000 FED App. 0229P (6th Cir. 2000) (applying Michigan law).

¹⁰ § 252.

¹¹ *Sorrells v. Clifford*, 23 Ariz. 448, 204 P. 1013 (1922); *Tate v. Colony House Builders, Inc.*, 257 Va. 78, 508 S.E.2d 597 (1999); *Gardner v. Gardner*, 190 Wis. 2d 216, 527 N.W.2d 701 (Ct. App. 1994).

¹² [VNA Plus, Inc. v. Apria Healthcare Group, Inc.](#), 29 F. Supp. 2d 1253 (D. Kan. 1998) (applying Missouri law).

¹³ §§ [71](#) to [78](#).

¹⁴ [Nye Odorless Incinerator Corp. v. Felton](#), 35 Del. 236, 162 A. 504 (Super. Ct. 1931); [Hogan v. McCombs Bros.](#), 190 Iowa 650, 180 N.W. 770 (1921).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.